

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 1-12 are currently pending. No claims having been amended herewith, thus, no new matter is added.

In the outstanding Office Action, Claims 1-12 were rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. §251 for failing to identify at least one error which is relied upon to support the reissue application and an assent of assignee was noted as being absent.

Applicants note that an Amendment under 37 C.F.R. § 1.116 and § 1.173 was previously filed on July 16, 2010, but was not entered according to the Advisory Action dated August 5, 2010. Applicants request entry of the previously submitted Amendment under 37 C.F.R. § 1.116 and § 1.173 for the reasons discussed below.

In the outstanding Advisory Action, the Amendment filed July 16, 2010 was indicated as not entered because the amendments required further review. However, Applicants respectfully object to the Amendment filed July 16, 2010 not being entered. Applicants submit that the amendment to independent Claim 9 to include the language “non-transitory,” is consistent with the guidance provided in Under Secretary Kappos’ memo of January 26, 2010 and should not raise new issues that require further search or consideration. In particular, Applicants note that the memo of January 26, 2010 states “[s]uch an amendment would typically not raise the issue of new matter.” Accordingly, Applicants respectfully request that the Examiner enter the Amendment filed July 16, 2010. Furthermore, if the Examiner still declines to enter the Amendment, Applicants respectfully request that the Examiner and his supervisor grant a telephone interview with Applicants’ representative to discuss the above-noted matter.

Consequently, in light of the above discussion, the outstanding grounds for non-entry of the previous Amendment are believed to have been overcome. Furthermore, the present application is believed to be in condition for formal allowance for the reasons submitted previously on July 16, 2010. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 07/09)